

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF MASSACHUSETTS**
3 **WESTERN SECTION**

4
5 **UNITED STATES OF AMERICA .**
6 . **No. 05cr30050-map**
7 **v.**
8 . .
9 **MIGUEL LOZADA**
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11 -----
12 **BEFORE THE HONORABLE MICHAEL A. PONSOR,**
13 **UNITED STATES DISTRICT JUDGE,**
14 **SENTENCING HEARING**
15 **March 7, 2007.**

16 -----
17 **APPEARANCES:**

18 -----
19 **For the government: Kevin O'Regan, Assistant U.S.**
20 **District Attorney, 1550 Main Street,**
21 **Springfield, MA 01103.**

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23 **For the defendant: Perman Glenn, III, 1163 Main Street,**
24 **Springfield, MA 01103.**

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26 **Alice Moran, CSR, RPR, RMR**
27 **Official Federal Court Reporter**
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1 || (Court commenced at 2:09.)

3 THE CLERK: Criminal Action 05-30050, the
4 United States versus Miguel Lozada.

5 **THE COURT:** We are here this afternoon for the
6 sentencing of Mr. Lozada. There are not many submissions
7 in connection with the case because this is a very
8 straightforward situation. The plea was to a specific
9 sentence.

10 I have just been handed a number of certificates of
11 achievement by Mr. Lozada including peer education, take
12 charge of your money, education technique, health
13 education, HIV awareness program, and looking at the
14 various things that the defendant has been doing, a
15 creative writing class.

16 **So Mr. Lozada has been taking advantage of the time**
17 **that he's been in custody to do a number of positive**
18 **things, and I think that speaks well of Mr. Lozada.**

19 The sentence here was agreed to at the time of the
20 plea and that is 150 months. It's a substantial sentence
21 obviously, twelve and a half years.

22 **Mr. Lozada has been in custody now for close to two**
23 **years. It will be two years this -- well, hang on. Yes,**
24 **it will be two years this June, and I do have the defense**
25 **motion that was faxed to stay execution of the sentence**

1 **for a period of time to allow the defendant to clear up**
2 **some pending state court matters, and I'm prepared to**
3 **give the defendant 60 days or something of that nature.**
4 **He'll remain in custody pending designation of the**
5 **facility, if the government doesn't have any problem with**
6 **that?**

7 **MR. O'REGAN: I do not, Your Honor. We did**
8 **discuss with the deputy marshals a few minutes ago the**
9 **process, and Mr. Lozada was hoping to go to state court**
10 **tomorrow but that's not the way the process works. He**
11 **will go back into federal custody and then a writ will**
12 **have to be issued by the state court for him. I think**
13 **keeping him in New England makes sense.**

14 **THE COURT: Very good. So that's what we will**
15 **do. I will just indicate that the defendant will not**
16 **commence his sentence any earlier than May 11th, which**
17 **would be 60 days from now, and that should give us plenty**
18 **of time to let Mr. Lozada finish up everything that he**
19 **has to finish up.**

20 **After that I don't know where the Bureau of Prisons**
21 **will designate Mr. Lozada. It could be someplace**
22 **relatively close. There's Fort Devens, which is quite**
23 **crowded right now as I understand it. It could be**
24 **Lewisburg. It could be any one of a number of places.**
25 **It will be up to the Bureau of Prisons to decide that.**

1 **I'm happy to recommend a place of incarceration that
2 is as close to Springfield as possible if that's what the
3 defendant would like or any other place.**

4 **MR. GLENN: I think Mr. Lozada has done some
5 research and he's interested in New Jersey, Fort Dix in
6 New Jersey.**

7 **THE COURT: Fort Dix?**

8 **MR. GLENN: Yes.**

9 **THE COURT: I'll make that recommendation then.
10 I will be happy to do that.**

11 **MR. GLENN: Thank you, Judge.**

12 **THE COURT: There are no objections to the
13 presentence report, is that correct, Mr. O'Regan?**

14 **MR. O'REGAN: That's correct, Your Honor.**

15 **THE COURT: And from the defendant no
16 objections?**

17 **MR. GLENN: None, Your Honor.**

18 **THE COURT: I want the record to reflect that I
19 incorporate into this sentencing proceeding all of the
20 contents of the presentence report, and particularly the
21 calculation of the sentencing guideline range at an
22 Offense Level 30 and a Criminal History Category V I
23 believe, and that results in a sentencing guideline range
24 of 180 to 188 months.**

25 **That guideline range in this case is trumped by the**

1 **plea agreement that was entered into between the**
2 **government and the defendant and that that plea agreement**
3 **was made pursuant to Rule 11(c)(1)(C) of the Federal**
4 **Rules of Criminal Procedure which was an agreed**
5 **disposition.**

6 **I have read the presentence report. I have no**
7 **objection to the agreed disposition. I think it's an**
8 **appropriate, although quite severe, sentence for Mr.**
9 **Lozada, and I'm prepared to impose that sentence that's**
10 **been agreed upon.**

11 **I'll hear anything that you have to say, Mr. Glenn,**
12 **before I make my final decision.**

13 **MR. GLENN: Well, Your Honor, I don't have much**
14 **to add. Mr. Lozada and I have met just recently. We**
15 **talked about this. He's resigned to serve this sentence.**
16 **He has an action plan to succeed. He is planning on**
17 **using these next several years to empower himself and to**
18 **better himself and to return back to society and be a**
19 **law-abiding citizen, Your Honor.**

20 **THE COURT: Good.**

21 **MR. GLENN: There's just not much to say at**
22 **this point. Thank you.**

23 **THE COURT: Yes.**

24 **Mr. Lozada, you have a right to speak if you wish to**
25 **before I impose my sentence and I'd be happy to hear**

1 anything that you have to say.

2 THE DEFENDANT: Umm, Your Honor, actually, yes.
3 I just want to say while growing up, Your Honor, I've
4 been exposed to a lot of things and a lot of negativity
5 in my life, and I guess that left me with only one
6 thought as I got older and it was to live that lifestyle.

7 But I think to say that I am a product of my
8 environment is only a way to seek for me to blame -- to
9 put the blame on society and I'm not trying to do that.

10 My first step is to accept responsibility for what I
11 did and just overcome this obstacle right now. I'm
12 trying to overcome this obstacle so I could be there for
13 my son who was born while I was in. That's kind of why I
14 asked for Fort Dix, New Jersey. I looked into it and
15 they have a lot of vocational programs that I want to get
16 into so I could have a smooth transaction back into the
17 community. Thank you.

18 THE COURT: Thank you. Well, I think that's an
19 admirable ambition. You certainly have had a rough time
20 and I'm fully familiar with that. Your mother and father
21 are no longer here to guide you.

22 You've been in a number of foster homes and got
23 caught up in gang activities, and now you've got a little
24 baby who's going to be wondering where his dad is before
25 too long and when time comes, you want to be coming out

1 and be there for him.

2 You're still a young man. This sentence of twelve
3 and a half years is tremendously difficult, and I don't
4 mean to in any way suggest that it's going to be anything
5 but that, but you're 23 years old now.

6 You will be in your mid-30s still, as I define it
7 and I think as anybody defines it, a very young man with
8 a vast majority of your life still ahead of you to live.

9 The thing that will be important is not to get
10 involved in anything related to firearms or controlled
11 substances. I'm not saying that to give you a lecture.
12 I'm just saying that to tell you something that you
13 already know, which is that the guidelines and the
14 minimum mandatories and so on will just crush you if you
15 get involved again. They will bring you back here and
16 just toss you into the middle of the ocean.

17 So, please, today's a sad day. It's hard to impose
18 a sentence that is this long, but it is a sentence you
19 can fight through. Your child will be just starting high
20 school or junior high school and it will be about the
21 time when he will want to know who his dad is and have
22 his dad around to teach him what's right. I'm really
23 hoping that you can get these skills and come out of
24 this process and walk in the light again.

25 THE DEFENDANT: Thank you, Your Honor.

1 **THE COURT: All right. So that's the sentence**
2 **that I'm going to impose here. Let me read it formally**
3 **into the record.**

4 **Pursuant to the Sentencing Reform Act of 1984, and**
5 **having considered the sentencing factors enumerated at**
6 **Title 18, United States Code Section 3553(a), it is my**
7 **judgment that the defendant, Miguel Lozada, be committed**
8 **to the custody of the Bureau of Prisons to be imprisoned**
9 **for a term of 150 months.**

10 **I'm going to make a judicial recommendation that you**
11 **be permitted to participate in the Bureau of Prisons'**
12 **500-hour residential drug abuse program. I think you**
13 **will find that a supportive thing to do and it will be**
14 **something that will kick in at the end of your sentence.**
15 **If you complete it successfully, it could mean a sooner**
16 **transition into a halfway house.**

17 **Upon release from imprisonment, you're going to be**
18 **placed on supervised release for a term of five years.**
19 **You will be under the supervision of the probation office**
20 **for a five-year period.**

21 **Within 72 hours of release from the custody of the**
22 **Bureau of Prisons, you will report in person to the**
23 **district to which you're released to begin your term of**
24 **supervised release.**

25 **I'm not going to impose a fine because I think**

1 **you're not in a position to be able to pay a fine, but I**
2 **am going to impose certain conditions which will apply to**
3 **this five-year term of supervised release once you finish**
4 **your prison sentence, Mr. Lozada.**

5 **First, you shall not commit any other federal,**
6 **state, or local crime obviously.**

7 **Second, you shall refrain from any unlawful use of a**
8 **controlled substance, and you will submit to one drug**
9 **test within 15 days of release from imprisonment and at**
10 **least two periodic drug tests thereafter, not to exceed**
11 **104 tests per year if and as directed by the probation**
12 **office.**

13 **Third, you will submit to the collection of a DNA**
14 **sample, which is automatic.**

15 **Fourth, you will comply with the standard conditions**
16 **that have been adopted by the court and which are**
17 **described at Section 5D1.1(3)(c) of the Sentencing**
18 **Guidelines and which will be set forth in detail in the**
19 **written judgment.**

20 **Fifth, you shall not possess any type of firearm,**
21 **destructive device, or dangerous weapon. Firearms are**
22 **absolutely death to you. If they catch you with a**
23 **firearm, they will throw the key away. So you have to be**
24 **very careful about that.**

25 **Next, you're to participate in a program of**

1 **substance abuse counseling. Again, this program will**
2 **include testing up to two times per week or 104 tests per**
3 **year, and you will participate -- you will contribute to**
4 **the cost of this treatment program based upon your**
5 **ability to pay or based upon the availability of**
6 **insurance or other third-party payment.**

7 **I'm also going to order during your period of**
8 **supervised release, Mr. Lozada, that you participate in a**
9 **counseling program as directed by the probation office,**
10 **and again you'll contribute to the cost of this**
11 **counseling based on your ability to pay or the**
12 **availability of insurance or some other third-party**
13 **payer.**

14 **I'm going to order that you use your true name, and**
15 **you're prohibited from using any false identifying**
16 **information. There is a special assessment of \$100 which**
17 **is due immediately.**

18 **You have a right to appeal this sentence. If you**
19 **cannot afford an attorney to represent you on appeal, one**
20 **will be appointed who will be paid out of public funds.**

21 **I'm going to also make a recommendation that the**
22 **defendant be permitted to serve his sentence at the**
23 **federal facility in Fort Dix in New Jersey.**

24 **I can't promise that the Bureau of Prisons will**
25 **follow that recommendation. They do as often as they can**

1 **and more often than not, but sometimes due to overcoming
2 or other factors they don't follow the recommendation.**

3 **I'm hoping that you will end up in Fort Dix, but don't be
4 surprised if it turns out to be something else.**

5 **I'm also going to order that the defendant will
6 commence his sentence as soon as the designation is made
7 but no earlier than May 11, 2007, approximately two
8 months from today, and that will permit Mr. Lozada to be
9 detained locally by the marshal service so that he can be
10 handed in to finish up his state court matters if anything
11 else still remains to be done by him.**

12 **I'm going to give you back the originals of these
13 certificates, Mr. Glenn. I've had an opportunity to look
14 them over. Mr. Stuckenbruck will hand them back to you
15 here so they won't get lost in the file that way.**

16 **MR. GLENN: Thank you, Your Honor.**

17 **THE COURT: Is there anything further from the
18 government?**

19 **MR. O'REGAN: No, Your Honor.**

20 **THE COURT: Mr. Glenn?**

21 **MR. GLENN: No, sir.**

22 **THE COURT: Good luck, Mr. Lozada.**

23 **THE DEFENDANT: Thank you, Your Honor.**

24 **THE COURT: Thank you.**

25 **(Court recessed at 2:23.)**

1 **C E R T I F I C A T E**

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4 **I, Alice Moran, Official Federal Court Reporter for**
5 **the United States District Court for the District of**
6 **Massachusetts, do hereby certify that the foregoing**
7 **transcript is a true and accurate transcription of my**
8 **stenotype notes taken in the aforementioned matter to the**
9 **best of my skill and ability.**

10

11

12

13

/s/ Alice Moran

14

Alice Moran, CSR, RPR, RMR

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